

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. 1:09-cr-0094 LJM-KPF
)	
DARIOUS D. EDMUNDSON,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Larry J. McKinney, Judge, on June 10, 2011, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision, filed with the Court on June 2, 2011, and to submit to Judge McKinney proposed Findings of Facts and Recommendation for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings in this matter were held on October 12, 2011, pursuant to Title 18 U.S.C. §3583, and Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*.¹ The government appeared by Nicholas Surmacz, Assistant United States Attorney; the defendant appeared in person with his appointed counsel, Mike Donahoe, Office of the Indiana Federal Community Defender; and Jason Phillips, U.S. Parole and Probation officer, appeared and participated in the proceedings.

¹ All proceedings are recorded by suitable sound recording equipment unless otherwise noted. *See*, Title 18, United States Code, Section 3401(e).

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Mike Donahoe, Office of the Indiana Federal Community Defender, appointed counsel, was present to represent Mr. Edmundson in regard to the Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Edmundson and his counsel who informed the Court that they had read and understood the specifications of each alleged violation and waived further reading thereof.

3. Mr. Edmundson was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Edmundson would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Edmundson had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Edmundson had violated the alleged condition or conditions of supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge McKinney's designation on June 10, 2011.

7. Mr. Donahoe stated that Darious D. Edmundson would stipulate there is a basis in fact to hold him on the specifications of violations of supervised release set forth in the Petition. Mr. Edmundson waived, in writing, the preliminary examination and he was held to answer.

8. Mr. Edmundson, by counsel, stipulated that he committed specifications of violations numbered 1, 2, 3, 4 and 5 set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	“The defendant shall refrain from any unlawful use of a controlled substance.”
2	“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as provided by a physician.”
3	“The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered.” On May 14, 2011, the offender submitted a urine sample which tested positive for cocaine. The result was confirmed by Alere National Laboratory.
4	“The defendant shall participate in a substance abuse treatment program, which may include no more than eight drug tests per month, and shall pay a portion of the fees. The defendant shall abstain from the use of all intoxicants, including alcohol, while participating in a substance abuse treatment program.”
5	“The defendant shall not commit another federal, state or local crime.” On May 19, 2011, the offender was arrested for Operating a Vehicle While Intoxicated (felony) and Public Intoxication. This case is pending in Marion County, Indiana, under cause number 49F08-1105-FD-35354.

The Court placed Mr. Edmundson under oath and directly inquired of him whether he admitted specifications of violations of her supervised release set forth above. Mr. Edmundson

stated that he admitted the above violations as set forth. The Court now finds there is a basis in fact for his admissions and accepts same.

Counsel for the parties further stipulated to the following:

- 1) Mr. Edmundson has a relevant criminal history category of VI, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation committed by Mr. Edmundson constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Edmundson is 11 months.
- 4) The parties did not agree as to the appropriate disposition for Mr. Edmundson's violations of the conditions of supervised release.

9. The defendant, by counsel, and the government each presented evidence regarding appropriate disposition of the case.

The Court having heard the evidence and/or arguments of the defendant and his counsel, and the government, now finds that Mr. Edmundson violated the specified conditions of supervised release as delineated in the Petition to Revoke his supervised release.

Mr. Edmundson's supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of 10 months. The Court recommends to the Bureau of Prisons that Mr. Edmundson be designated to a correctional institution nearest to Indianapolis, Indiana. Upon release from the community correctional facility, Mr. Edmundson will not be subject to supervised release.

The Magistrate Judge requests that Jason Phillips, U. S. Parole and Probation Officer, prepare

for submission to the Honorable Larry J. McKinney, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Edmundson stipulated in open court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72(b), *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U.S. District Court for the Southern District of Indiana*.

Counsel for the parties and Mr. Edmundson entered the above stipulations and waivers after being notified by the undersigned Magistrate Judge that the District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Mr. Edmundson's supervised release and imposing a sentence of imprisonment of 10 months in the custody of the Attorney General. It is recommended that Mr. Edmundson be designated to a correctional institution nearest to Indianapolis, Indiana. Further, upon Mr. Edmundson's release from confinement, he will not be subject to a term of supervised release.

IT IS SO RECOMMENDED this 14th day of October, 2011.

A handwritten signature in black ink, appearing to read 'KF 10-14-11', is positioned above a horizontal line.

Kennard P. Foster, Magistrate Judge
United States District Court

Distribution:

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